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Situation of human rights in Iraq

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the situation of human rights in Iraq prepared by Max van der Stoel, Special Rapporteur of the Commission on Human Rights, in accordance with Economic and Social Council decision 1998/263 of 30 July 1998.

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Annex

Report on the situation of human rights in Iraq prepared by the Special Rapporteur of the Commission on Human Rights in accordance with Economic and Social Council decision 1998/263 of 30 July 1998

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I. Introduction

1. The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Iraq has been described in each of the Special Rapporteur's previous reports to the General Assembly and to the Commission on Human Rights. The mandate, initially articulated in Commission resolution 1991/74 of 6 March 1991 and extended most recently by the Commission in resolution 1998/65 of 21 April 1998 (approved by the Economic and Social Council in its decision 1998/263 of 30 July 1998), requires the Special Rapporteur to make a thorough study of the violations of human rights by the Government of Iraq.

2. The priority concerns of the international community with regard to the situation of human rights in Iraq are referred to in the resolutions which the various competent organs of the United Nations have adopted over the past seven years, in particular General Assembly resolution 52/141 of 12 December 1997 and Commission resolution 1998/65 of 21 April 1998, which are the most recent.

3. The Commission on Human Rights noted in its most recent resolution that there has been no improvement in the situation of human rights in the country and strongly condemned the massive and extremely grave violations of human rights and of international humanitarian law by the Government of Iraq, which constitute together an all-pervasive repression and oppression sustained by broad-based discrimination and widespread terror; the suppression of freedom of thought, expression, religion, information, association, assembly and movement through fear of arrest, imprisonment and other sanctions, including the death penalty; summary and arbitrary executions, including political killings, enforced or involuntary disappearances, routinely practised arbitrary arrests and detention and consistent and routine failure to respect due process and the rule of law; widespread, systematic torture in its most cruel forms, and the enactment and implementation of decrees prescribing cruel and inhuman punishment, namely mutilation, as a penalty for offences and diversion of medical care services for such mutilations.

4. In the absence of cooperation on the part of the Government, the Special Rapporteur has continued to rely on information from governmental, intergovernmental and non-governmental sources. He has also received well-documented information from individuals connected in one way or another with the situation in Iraq. He has further received several well-documented reports describing the situation in Iraq, particularly in relation to the matters over which the General Assembly and the Commission on Human Rights have expressed serious concern. No less importantly, he has had direct contact with Iraqis who have fled the country and from whom he continues to receive information.

5. The present interim report is based upon information received by the Special Rapporteur up to 31 August 1998 and is to be read in conjunction with the Special Rapporteur's last report to the Commission on Human Rights (E/CN.4/1998/67).

II. Civil and political rights

6. Since the politico-legal structure of the Republic of Iraq has not changed in the past year, human rights continue to be violated systematically in Iraq. Not surprisingly, allegations relating to arbitrary arrests, mistreatment in detention, cruel and unusual punishments and arbitrary and extrajudicial executions continue to be received.

A. Extrajudicial, summary or arbitrary executions

7. The Special Rapporteur has already reported upon the so-called "prison cleansing campaign" in his last reports to the General Assembly and the Commission on Human Rights. He continues to receive reports referring to an execution campaign taking place in Abu Ghraib prison near Baghdad. Supporting the allegations, several lists of names of more than 170 detainees executed between mid-December 1997 and July 1998 have been made available to the Special Rapporteur.

8. With regard to the charges which have led to the death penalty, these executions are said to have involved detainees charged with participating in "mob incidents". This accusation is alleged to cover up the politically motivated intention to punish those persons who took part in the popular uprisings of March 1991 characterized by the Government of Iraq as "mob incidents". It is to be mentioned that some of the persons who took part in these events are currently serving sentences ranging from 10 to 15 years in Abu Ghraib prison.

9. The names of some of the victims have been mentioned in official orders reportedly issued by the Secretary of the Presidential Office, dated 24 March 1998, addressed to the Public Security Directorate demanding "the necessary instructions regarding the crime of those executed for destabilizing State security and threatening national security,

and withdraw[ing] their military ranks and the medals awarded to them". The victims come from the governorates of Ta'mim, Basra, Kerbala, Misan, Babel, Dhe Qar, Qadisiyyah, Najaf and Muthanna.

10. Concerning the last list received which refers to 62 detainees said to have been executed in late June 1998, the sources report that the victims originated from governorates throughout Iraq. However, they were all charged with participating in "mob incidents" in 1991. Most of the victims had been detained for several years, in particular in Mosul detention centre, before their sentences were carried out. The information received further reveals that the victims had been transferred to death cells in Abu Ghraib prison about three months before the executions. As a result, their state of health was reportedly very poor. The sources also report that after the executions the bodies of the victims were transported to Al-Kindi hospital for post-mortem.

11. It is further reported that the above-noted executions were carried out either by hanging or shooting. According to certain sources, the authorities did not return the bodies of the victims to the families, but buried the corpses in mass graves in Abu Ghraib district. Other sources report that the bodies were returned, but the families had to pay for the bullet used to kill the victim in order to recover the bodies of their relatives. In these last cases, the families were reportedly not allowed to hold burials and mourning ceremonies.

12. In his last report to the Commission on Human Rights (E/CN.4/1998/67), the Special Rapporteur reported on the case of four Jordanians executed on 8 December 1997 for having smuggled $850 worth of car parts. Subsequently, on 12 December 1997, the Special Rapporteur on extrajudicial, summary or arbitrary executions sent a letter to the Government of Iraq requesting information concerning the aforementioned executions. On 30 March 1998, the Government of Iraq replied to the Special Rapporteur on extrajudicial, summary or arbitrary executions stating that the four Jordanians had been duly tried in accordance with the laws in force at the time of the commission of the offence, in conformity with article 182 of the Code of Criminal Procedure. They had been sentenced to death in accordance with article 194 of Customs Act No. 23 of 1984, as amended by Revolution Command Council Decree No. 67 of 1994, pursuant to articles 47, 48 and 49 of the Penal Code and article 11 of the Trade Regulatory Act, on charges of smuggling spare parts, material, heavy equipment and machinery after it had been dismantled. The reply further stated that this offence is highly detrimental to the country's economic infrastructure and to the public interest, being equivalent to deliberate economic sabotage in time of siege and war.

13. The Special Rapporteur observes, as he has in the past, that execution for commission of petty property crimes – involving no violence whatsoever – is a wholly disproportionate punishment constituting violation of the right to life. Moreover, the Special Rapporteur considers that maintenance by the Government of Iraq of such severe penalties for such a wide variety of offences is indicative of the nature of the overall situation of human rights in Iraq, as evidenced also in the general attitude of the authorities in defending as normal the imposition of the death penalty for such petty offences.

14. Since taking up his mandate in the summer of 1991, the Special Rapporteur has also received detailed information concerning what he has called "political killings". In previous reports, this phrase has been used to describe pre-planned killings of individuals carried out by government agents upon orders, from the murder of village mayors to Ministers of State and from High Street assassinations to elaborate extraterritorial assassinations and thallium poisonings. This year again, the Special Rapporteur finds himself having to condemn recent assassinations, specifically those of two internationally respected religious scholars residing in Najaf: Grand Ayatollah Shaykh Mirza Ali al-Gharawi and Ayatollah Shaykh Murtada al-Burujerdi. By a statement issued on 2 July 1998 (HR/98/45), the Special Rapporteur expressed his concern that these deaths may be part of an organized attack by Iraqi officials against the independent leadership of the Shi'a religious community in Iraq. Such attacks are consistent with previous assaults against the Shi'a religious establishment in Iraq, especially since the uprisings of March–April 1991.

15. According to information received, Grand Ayatollah Shaykh Mirza Ali al-Gharawi (68 years old) was assassinated on 18 June 1998 in his car on the route between the holy cities of Karbala and Najaf. He was accompanied by his son-in-law, driver and another companion. According to information from persons claiming to have been witnesses, the car of Ayatollah al-Gharawi was stopped and all four passengers were shot dead on the spot.

16. Ayatollah al-Gharawi was a well-respected religious scholar and was also a senior spiritual leader (or *marja*) of Shi'a Muslims. The Iraqi Government is reported to favour another scholar whom many clerics feel is unqualified. Just one month prior to his assassination, it was reported that Ayatollah al-Gharawi had been harassed and warned by the Iraqi authorities to cease leading prayers, despite the fact that Ayatollah al-Gharawi had never been involved in

political activity. The Iraqi Government has denied any involvement in the attack, calling the murders "a treacherous crime behind which stand malicious foreign-based elements".

17. The assassination of Ayatollah al-Gharawi follows the recent assassination of Ayatollah Shaykh Murtada al-Burujerdi (67 years old), another leading religious scholar and jurist residing in the holy city of Najaf, who was shot dead in the evening of 21 April 1998 while he was walking home with two companions after he had led congregational evening prayers at the shrine of Imam Ali. Reliable sources claim that Ayatollah al-Burujerdi had suffered various forms of harassment by Iraqi officials in the two years prior to his death. In particular, the Ayatollah had previously survived two serious attacks. In the first (two years ago), he was severely beaten and in the second (a little over a year ago), a hand grenade was thrown at him causing injuries to his legs which forced him to remain at home for two months.

18. Following the 1991 uprising in southern Iraq, Ayatollah al-Burujerdi, who at that time had been arrested for three days, began leading the daily prayers in the sacred enclosure of Imam Ali. As well as being a leader of the congregational prayers, Ayatollah al-Burujerdi was a serious candidate for the position of *marja*. It was reported that Ayatollah al-Burujerdi had been asked by the Iraqi authorities to give up his post as leader of the prayers at the shrine of Imam Ali, but he refused. Two months prior to his death, Ayatollah al-Burujerdi was reportedly visited by Iraqi officials who ordered him to stop leading the prayers, but he said he would only agree to do so if he received an order in writing from the Government. He was apparently opposed to the Iraqi Government's interference with the religious community, including the Government's support for another cleric.

19. The Special Rapporteur fears that these murders are part of a systematic attack on the independent leadership of Shi'a Muslims in Iraq. The Special Rapporteur notes that Grand Ayatollah Sayed Ali Seestani (the current Shi'a Islamic spiritual leader who succeeded Grand Ayatollah Sayed al-Khoei who died under house arrest in 1992) was attacked at his home in Najaf in November 1996, resulting in the death of one of his employees. Grand Ayatollah Seestani was effectively harassed into stopping his prayers at the al-Khadra mosque. The Special Rapporteur also recalls that governmental authorities have been associated with a series of previous fatal accidents, apparently engineered, such as the well-known case of Sayed Muhammed Taqi al-Khoei (son of the late Grand Ayatollah al-Khoei) who died on 21 July 1994 in a suspicious car accident while returning from his weekly visit to Karbala. He was accompanied by his brother-in-law, Amin Khalkhali, his six-year-old nephew and his driver when they crashed into an unlit truck blocking the divided highway on flat ground at around 11 p.m. His driver and nephew died instantly. Mr. Al-Khoei and his brother-in-law were not taken to the hospital immediately and bled to death on the side of the road. An ambulance arrived only around 4 a.m. to pick up the bodies. As with Ayatollah al-Burujerdi and Ayatollah al-Gharawi, Muhammad Taqi al-Khoei had previously been harassed by Iraqi security agents and had received threats aimed to stop his independent activities within the Shi'a religious community.

20. In each of the cases of Ayatollah al-Gharawi, Ayatollah al-Burujerdi and Sayed al-Khoei, the Iraqi authorities took the bodies and had them buried immediately. The burial of Ayatollah al-Gharawi was in the presence of his son who was prohibited from engaging in any funeral procession as well as from the traditional ritual prayer over his father's body in a mosque. The Iraqi authorities have also failed to carry out thorough investigations into the murders and suspicious accident.

21. The Special Rapporteur believes that the deaths of the religious leaders described above must be viewed in the context of the previous threats against them, their special roles as leading members of the Shi'a religious establishment in Iraq, and the history of similar terrorist acts committed against any person who might be perceived as a threat to the Iraqi Government – in particular because of their independence or their popularity among ordinary Iraqis.

22. As reprehensible as they are as violations of the individual victims' right to life, such killings are most notable because of their apparent intent to violate, by means of terror, the freedoms of opinion and expression of particular groups or the population as a whole. Although the cases concern the killing of particular persons, the aim of the killings appears to be a political one with the objective of silencing dissent and suppressing opposition. Such political killings constitute a gross violation of the human rights of entire groups of people and, indeed, of the population as a whole.

23. Faced with the gravity of the situation, the Special Rapporteur sent a letter to the Government of Iraq on 1 July 1998 in which he requested that the Iraqi authorities carefully investigate both cases so as to clearly identify those responsible. With respect to the remaining Shi'a religious establishment in Iraq, the Special Rapporteur further called upon the Government of Iraq to ensure their personal integrity and freedoms.

B. Arbitrary detention and conditions of detention

24. The Special Rapporteur has also continued to receive reports of widespread arbitrary arrest and detention. Some of these concern the arbitrary arrest several years ago of persons who continue in detention, while others concern recent arrests and detention.

25. The Special Rapporteur has received information on the arrest in July 1998 of Mr. Dawoud Al-Farhan, a senior journalist and reporter for the Middle-East News Agency and a columnist for the daily *Al-Iraq* and the weekly *Al-Mousawar Al-Arabi*. Mr. Al-Farhan was arrested at his office in Baghdad and taken to the Ministry of Information. It is further believed that his arrest might be related to recent articles he had written reporting on corruption and embezzlement by Iraqi government officials. All efforts made by his family to locate him have been to no avail and his fate remains unknown.

26. The Special Rapporteur has also received three lists of detainees whose cases were processed by the Public Security Directorate of Ta'mim (Kirkuk) in 1998. In addition to the name, ethnic origin and the governorate of each detainee, the list also provides the charges for which they were arrested and subsequently detained.

27. The first list refers to political cases and contains the names of 42 detainees who have been arrested and charged with "spying" or "belonging to the opposition". The charge of spying is not meant on behalf of a foreign State, but is employed by the Government of Iraq also for members of political opponents inside the country. Indeed, the first part of the list names 32 persons of either Arab, Kurdish or Turcoman origin who have been arrested for spying or belonging to the opposition. These detainees have been transferred to the Security General Directorate after inquiry and questioning in early April 1998. The second part of the list refers to 10 other persons of Kurdish origin charged with supporting the Patriotic Union of Kurdistan who have been detained since April 1998.

28. The second and third lists, which contain 41 and 89 names, respectively, cite the charges for which the detainees were arrested. The charges are numerous and range from criticizing the Government to smuggling food items, stealing, forging documents (passports), fleeing the country or fleeing to northern Iraq. However, the sources report that the authorities often resort to charging detainees with petty crimes, burglary, smuggling or even murder in order to conceal the real reason for arrest and detention.

29. On the subject of disappearances, it is to be noted that the Special Rapporteur received a report revealing that hundreds of Fayli Kurds and other Iraqi citizens of Iranian origin who had disappeared in the early 1980s were in fact being held incommunicado in Abu Ghraib prison. According to this report, these persons have been detained in extremely harsh conditions without specific charges or trial for periods of 17 and 18 years. Families of the detainees (women, children and the elderly) had been forced to leave their homes and cross the border into Iranian territory in 1980.

C. Cruel and unusual treatment and punishment

30. It has been part and parcel of most of the allegations received by the Special Rapporteur concerning detention that persons arrested and detained are routinely subjected to mistreatment, including prolonged inquisitions accompanied by beating and various deprivations, not to mention torture.

31. The Special Rapporteur has expressed for some years his extreme concern about especially cruel and unusual punishments prescribed by Iraqi law, i.e. mutilations including amputations and brandings. While the Government of Iraq has argued in the last year or two that these punishments have not been imposed, the Special Rapporteur has observed that the Government's failure to abrogate the punishments from prescribed law constitutes a continuing gross violation of human rights insofar as the prescriptions function to terrorize the population and may well be reimposed should the Government suddenly withdraw its suspension of their implementation.

32. In connection with the above-mentioned cruel and unusual punishments, the Special Rapporteur has received a report indicating that penal amputations were reimposed in August 1998. According to information received, in a letter dated 7 August 1998, Uday Hussain, the son of President Saddam Hussein, ordered that six members of an elite commando unit who used their position to rob people be punished by having a hand amputated. An army deserter also involved in the alleged banditry was ordered to be punished in a similar way. This report is notable for at least three reasons: (a) it indicates that penal amputations are being imposed in Iraq; (b) it indicates that such punishments are being imposed without due process of law; and (c) it indicates that there is effectively no rule of law in Iraq insofar as Uday Hussein holds no judicial or similar competence and is merely the publisher of a daily newspaper and the head of the Iraqi Olympic Committee.

III. The rights to food and health care

33. The Special Rapporteur has consistently reported on the food and health situation in Iraq since he took up his mandate in 1991. The Special Rapporteur observes that along with the systematic violation of various civil and political rights, the Government of Iraq has consistently failed to respect its obligations under the International Covenant on Economic, Social and Cultural Rights to the detriment of the welfare of millions of Iraqi citizens. In particular, notwithstanding its own calculations of widespread suffering and high morbidity and mortality rates throughout the country (especially affecting women, children and the elderly), the Government of Iraq has persistently failed to act to the maximum of its available resources and in full cooperation with the international community to respect and ensure the rights to food and health care, according to article 2 of the Covenant in conjunction with articles 11 and 12.

34. The Government of Iraq refused for five years to cooperate with the United Nations and take advantage of the so-called "oil-for-food" resolutions which would have long ago provided substantially increased resources to assist specially affected persons. At the same time, it failed to ensure the end of the sanctions – and consequently also the end for the need for "oil-for-food" programmes – by complying with relevant Security Council resolutions. When the Government of Iraq finally did begin to cooperate with the United Nations on the implementation of an "oil-for-food" programme, it nonetheless prevaricated in negotiations, restricted the access and flexibility of the United Nations in carrying out the operations and subsequently interrupted oil sales at various times and for significant durations, all of which has been to the detriment of the long-suffering Iraqi people, in particular the most vulnerable.

35. Greater supplies of food and medicine and more material for the improvement of the sanitation system would have reached Iraq if the Government would have given priority to these items in allocating resources for imports. But instead it gave priority to its military programmes and to the building of prestige objects such as numerous palaces for which material had to be imported from abroad.

36. It is to be noted that the "oil-for-food" programme was substantially increased as a result of Security Council resolution 1153 (1998) of 20 February 1998 which more than doubled the allowable sales of oil to some US$ 5.2 billion every six months. In his report of 5 June 1998 (S/1998/477), the Secretary-General noted that the implementation of the "oil-for-food" programme was improving as a result of the efforts made by all parties involved. Indeed, the Office of the Iraq Programme and the Security Council Committee had taken measures so as to improve the expeditious processing and approval of applications under phase III. The Government of Iraq had also reportedly improved contractual arrangements with its suppliers, in particular by setting delivery time-limits in the contracts. These efforts have led to a general increase in the range and volume of humanitarian supplies reaching Iraq. As a result, the distribution of the ration basket was made more complete and medicines and health supplies were reported to arrive with increasing frequency.

37. Nevertheless, these efforts had been offset by a substantial drop in oil prices and delays by the Government of Iraq in the resumption of oil sales, so that at times there have been more than 200 applications approved, but letters of approval could not be released because of lack of funding. Therefore, arrivals of supplies continued to be erratic resulting in missing, delayed or reduced items, the greatest impact being felt in the food and health sectors. Medical contracts remained unfunded until the latter part of the phase.

38. Notwithstanding improvements in the efficiency of the programme, as reported by the Secretary-General, the humanitarian situation remains precarious. Indeed, United Nations observers report that only once in March 1998 did the food basket contain the full ration for all commodities other than infant formula. They also report that for more than half of the households checked, depending on the commodity, the ration lasts for an average of 20 days. As for the beneficiaries, they continue to complain about the inadequacy of the food basket.

39. With regard to the nutritional situation of children under the age of five, the Ministry of Health, the United Nations Children's Fund and the World Food Programme conducted in March 1998 a nutritional status survey the preliminary results of which indicate that the situation remains unchanged since the previous survey in March 1997. It is reported that 27 per cent of children are suffering from chronic malnutrition while 9 per cent are suffering from acute malnutrition. The Special Rapporteur is deeply concerned by the persistence of this suffering and its implications for Iraqi society.

40. Until 14 May 1998, Iraqi citizens who had moved from the three northern governorates of Dohuk, Erbil and Sulaymaniyah to new domiciles in the 15 governorates in the centre and south were not eligible to receive the ration provided under Security Council resolution 986 (1995).

Since 14 May 1998, the aforementioned citizens are reportedly eligible to receive the food ration. However, the Special Rapporteur believes that the established registration procedure is discriminatory as these citizens in order to receive their rations must prove that they have resided in the new location for at least six months. Therefore, a family who decides to move from the three northern governorates to a governorate in the centre or the south will not be able to receive its food ration for six months. The Special Rapporteur believes that such a regime is contrary to the humanitarian spirit of the ration system which is supposed to be based simply on need.

41. Health centres located in remote areas do not receive or collect supplies on a regular basis and are usually one month behind distribution elsewhere. Furthermore, because they are not staffed by doctors, they do not receive special drugs and supplies needed in emergency cases such as road traffic accidents. The Special Rapporteur is concerned that remote areas are neglected and suffer discrimination with regard to supplies of certain drugs.

42. Since the first distribution of supplies to private sector pharmacies in August 1997, the allocation of general drugs has been based on a defined quota according to population density and the number of pharmacies. In January 1998, the allocation criteria were restricted to the number of pharmacies. This has led to an increase in the proportion of supplies allocated to Baghdad. Whereas hitherto private pharmacies in Baghdad had received 32.9 per cent of supplies for approximately 29 per cent of the Iraqi population, this has now increased to 40 per cent. The Special Rapporteur is concerned that this practice is discriminatory towards the population who live outside Baghdad with regard to their right to health care.

43. Insofar as the "oil-for-food" programme has been implemented in a discriminatory and not fully equitable or efficient manner, the Special Rapporteur observes that the Government of Iraq is solely responsible for the distribution programme. By determination of the Government of Iraq, the role of the United Nations is only to observe with a view to ensuring the equitable distribution of supplies received under the programme. In this respect, however, United Nations observers are seriously constrained by restrictions imposed by the Government of Iraq, including the following: (a) observers are always escorted by governmental representatives; (b) observers must notify and inform governmental officials about their schedules well in advance; and (c) observers are strictly limited in what they may ask citizens in the course of their "observations". In these circumstances, it is difficult to state that the monitoring is being performed in an independent and unprejudiced manner. Moreover, given the security situation, many sensitive areas are rarely, if ever, visited.

44. In terms of the overall efficiency of the "oil-for-food" programme, the Special Rapporteur also observes that the resistance of the Government of Iraq to the establishment of an "ongoing" programme, as recommended by the United Nations, further undermines the effectiveness of the programme to the detriment of the intended beneficiaries. The Special Rapporteur finds disingenuous the argument of the Government of Iraq that such an "ongoing" programme would be contrary to the spirit of the Security Council regime (which is intended to be temporary) since it is wholly within the power of the Government of Iraq to end this regime by complying with all Security Council resolutions. In the meantime, to plan the programme on an "ongoing" basis would add significantly to the overall efficiency and effectiveness of the "oil-for-food" programme, exactly in line with the humanitarian spirit of this programme.

IV. Conclusions and recommendations

45. The Special Rapporteur regrets that he is yet again unable to report any significant improvement in the situation of human rights in Iraq. Principally, there has been no change whatsoever in the politico-legal order which is the cause of systematic violations of human rights of all kinds and in all spheres of life. This is most apparent in the reported case of Uday Hussein's unilateral (and wholly unlawful) reimposition of amputations, which follows the refusal of the Government of Iraq to abrogate these heinous punishments.

46. The Special Rapporteur also concludes that the continuing attacks against the Shi'a religious establishment, in particular through the recent assassinations of religious leaders, constitutes systematic oppression in the form of an intended terror. This follows along the same evident intention of the Government of Iraq to punish all those who were in any way implicated in the uprisings of 1991.

47. With regard to the rights to food and health care, the Special Rapporteur regrets that the situation remains precarious notwithstanding the availability of significant resources pursuant to the enlarged "oil-for-food" programme. In this respect, the Government of Iraq bears primary responsibility for the continuing suffering of the Iraqi people.

48. In view of the above, all previous recommendations of the Special Rapporteur remain valid. Indeed, it would appear that so far not one of the Special Rapporteur's

recommendations has been implemented, with the exception of his recommendation to implement the "oil-for-food" programme – and this the Government of Iraq resists doing fully.